

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 98-4819

JAMES LEON FITZGERALD,

Defendant-Appellant.

Appeal from the United States District Court  
for the Western District of Virginia, at Roanoke.  
James C. Turk, District Judge.  
(CR-97-129-R)

Submitted: June 8, 1999

Decided: September 23, 1999

Before ERVIN,\* NIEMEYER, and MOTZ,  
Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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**COUNSEL**

Malcolm McL. Doubles, Salem, Virginia, for Appellant. Robert P.  
Crouch, Jr., United States Attorney, Donald R. Wolthuis, Assistant  
United States Attorney, Roanoke, Virginia, for Appellee.

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\*Judge Ervin participated in this case but died prior to the time the  
decision was filed. The decision is filed by a quorum of the panel pursu-  
ant to 28 U.S.C. § 46(d).

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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## OPINION

### PER CURIAM:

James Leon Fitzgerald appeals from the 180-month sentence imposed following his guilty pleas to conspiracy to possess with the intent to distribute and to distribute cocaine, 21 U.S.C.A. § 846 (West Supp. 1998), and using or carrying a firearm during and in relation to a drug trafficking offense, 18 U.S.C.A. § 924(c) (West Supp. 1999). Fitzgerald claims that the district court abused its discretion when it denied his motion to withdraw his plea and his motion for the appointment of new counsel and that his counsel provided ineffective assistance of counsel.

We have thoroughly reviewed the record and find that the district court did not abuse its discretion when it denied Fitzgerald's motion to withdraw his plea. See United States v. Moore, 931 F.2d 245, 248 (4th Cir. 1991). We further find that Fitzgerald failed to demonstrate that a total lack of communication existed between him and his attorney such that his attorney could not adequately represent him at sentencing. We therefore conclude that the district court did not abuse its discretion when it refused to appoint new counsel. See United States v. Morsley, 64 F.3d 907, 918 (4th Cir. 1995). We decline to address on direct review his independent claim of ineffective assistance of counsel. See United States v. Hoyle, 33 F.3d 415, 418 (4th Cir. 1994). Accordingly, we affirm Fitzgerald's convictions and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

### AFFIRMED